HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G.V. SEETHAPATHI

WRIT APPEAL No. 717 OF 2006

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Between:

Edupulapati Yelleswara Rao

……Appellant/Petitioner

And

Government of Andhra Pradesh,
Rep. by Principal Secretary,
Panchayat Raj Department,
Secretariat, Hyderabad and four others

……Respondents/Respondents

:: JUDGMENT ::

Counsel for the Appellant : Sri J.U.M.V. Prasad for
Sri M. Janardhan Rao

Counsel for the Respondents : Government Pleader for
Panchayat Raj

Dated: 19-06-2006

Per G.S. SINGHVI, CJ

Having failed to persuade the learned Single Judge to nullify orders dated 02-11-2004 passed by Collector (Panchayat Wing), Guntur (respondent No.2) and 07-01-2005 passed by Principal Secretary to Government, Panchayat Raj and Rural Development Department (hereinafter referred to as 'the Principal Secretary') in the matter of his suspension from the post of Sarpanch, the appellant has preferred this appeal under Clause 15 of the Letters Patent.

The appellant was elected as Sarpanch of Mandadam Gram Panchayat of Guntur District. Some of the villagers filed Writ Petition No.20646 of 2003 with the complaint that the Sarpanch (appellant herein) had misappropriated Gram Panchayat funds and despite representations made to respondent No.2, no action has been taken against him. The same was disposed of by the learned Single Judge on 21-04-2004 by directing respondent No.2 to take appropriate action in the matter.

In compliance of the direction given by the Court, respondent No.2 examined the complaint of the villagers and issued notice dated 15-07-2004 under Section 249(6) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act') and called upon the appellant to show cause as to why he may not be suspended from the post of Sarpanch. The appellant filed reply to contest the notice. Thereafter, respondent No.2 passed order dated 02-11-2004 whereby he suspended the appellant from the post of Sarpanch and also directed the Upa Sarpanch to take charge.

The appellant questioned the order of suspension in Writ Petition No.20588 of 2004, which was dismissed on the ground of availability of alternative remedy of revision. The revision filed by the appellant was dismissed by the Principal Secretary vide his order dated 07-01-2005.

The appellant challenged orders dated 02-11-2004 passed by respondent No.2 and 07-01-2005 passed by Principal Secretary by

filing Writ Petition No.481 of 2005. He pleaded that respondentNo.2 did not have the jurisdiction to invoke the provisions of Section 249(6) of the Act because the so-called irregularity attributed to him had been considered by respondent No.2, who passed order dated 23-04-2003 warning him not to repeat such mistakes in future. The learned Single Judge dismissed the writ petition by observing that respondent No.2 had considered the explanation submitted by the writ petitioner (appellant herein) with reference to irregularity alleged against him and, therefore, it cannot be said that the impugned order suffers from non-application of mind. The learned Single Judge further observed that the Government had also independently considered the matter and dismissed the revision.

Sri J.U.M.V. Prasad argued that the orders passed by respondent No.2 and the Principal Secretary should be declared as vitiated by an error of law and the appellant's suspension should be nullified because the so-called irregularity had already been enquired into by respondent No.2 and matter was dropped vide proceeding bearing Roc.No.4614/2002-G1, dated
23-04-2003. He further argued that the observation made by the Collector on the issue of alleged misuse of power and misappropriation of public funds by the appellant are not based on any evidence and, therefore, order dated 02-11-2004 should have been quashed by the learned Single Judge.

We have given serious thought to the arguments of the learned counsel, but have not felt persuaded to agree with him.

Since the relief sought by the appellant involves exercise of jurisdiction by this Court to issue a writ of certiorari, it will be apposite to notice the parameters and guidelines laid down by the Supreme Court for issue of a writ of certiorari.

It is settled law that a writ of certiorari can be issued against an order passed by the Subordinate Court or Tribunal or a quasi-judicial authority if the same is without jurisdiction or is in excess of the

jurisdiction or is violative of the rules of natural justice or is vitiated by an error of law apparent on the face of the record. To put it differently, the High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ Court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ Court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan**[1] the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

> i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the prJocedure adopted in dealing with the dispute is opposed to principles of natural justice.

ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

In **Surya Dev Rai v. Ram Chander Rai**[2] the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in

prolonging of the lis.

ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where “a stitch in time would save nine”. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

If the order under challenge is scrutinized in the light of the above noted principles, we do not find any valid ground or justification to interfere with the discretion exercised by the learned Single Judge not to interfere with the order passed by respondent No.2 under Section 249(6) of the Act or the one passed by the

Principal Secretary dismissing the appeal filed against the order of suspension.

In its very nature, the order of suspension was interlocutory in character. While placing the appellant under suspension, respondent No.2 had taken into consideration the allegation of misuse of power and misappropriation of public funds to the tune of Rs.69,764/- by the appellant. Whether or not the said allegation would be ultimately substantiated is not something which can determine the legality of the action taken by respondent No.2 under Section 249(6) of the Act, but this much is certain that the same could be taken into consideration for forming an opinion that it would not be in the interest of Gram Panchayat to allow the appellant to continue on the post of Sarpanch.

Letter dated 23-04-2003 on which heavy reliance has been placed by learned counsel for the appellant does not contain any prima facie determination of the appellant's guilt on the issue of misappropriation of public funds to the tune of Rs.69,764/-. Therefore, that letter cannot be made basis for absolving the appellant of the allegation levelled against him. On its part, the Principal Secretary to Government, Panchayat Raj Department, independently examined the matter and formed the opinion that the appellant had executed work of additional C.C. road of 62 meters without proper resolution which was against the provisions of the Act. Therefore, dismissal of the appeal preferred by the appellant against suspension cannot be declared as vitiated by an error of law.

For the reasons mentioned above, we hold that respondent No.2 did not commit any jurisdictional error by placing the petitioner under suspension and orders dated 02-11-2004 and 07-01-2005 passed by respondent No.2 and the Principal Secretary respectively do not suffer from any error of law which could justify interference by the High Court under Article 226 of the Constitution of India.

In the result, the appeal is dismissed.

G.S.SINGHVI, CJ

G.V. SEETHAPATHI, J

19-06-2006
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[1] AIR 1964 SC 477

[2] AIR 2003 SC 3044